

### Article 3.

#### Exercise of Power of Appointment.

##### **§ 31D-3-301. Requisites for exercise of power of appointment.**

A power of appointment is exercised only to the extent that the appointment is a permissible exercise of the power, and only if all of the following apply:

- (1) The instrument exercising the power is valid under applicable law.
- (2) The terms of the instrument exercising the power manifest the power holder's intent to exercise the power.
- (3) Subject to the provisions of G.S. 31D-3-304, the terms of the instrument exercising the power satisfy the requirements of exercise, if any, imposed by the donor. (2015-205, s. 3(a).)

##### **§ 31D-3-302. Intent to exercise; determining intent from residuary clause.**

A residuary clause that does not contain a blanket-exercisable clause or specific-exercise clause manifests the power holder's intent to exercise a power of appointment only if all of the following apply:

- (1) The terms of the instrument containing the residuary clause (including any valid codicil or amendment to the instrument) do not manifest a contrary intent.
- (2) The power is a general power exercisable in favor of the power holder's estate.
- (3) There is no gift-in-default clause or the clause is ineffective.
- (4) The power holder did not release the power. (2015-205, s. 3(a).)

##### **§ 31D-3-303. Intent to exercise after-acquired power.**

Unless the terms of an instrument exercising a power of appointment manifest a contrary intent:

- (1) If the power holder is not also the donor of the power, a blanket-exercise clause in the instrument extends to a power acquired by the power holder after executing the instrument containing the clause.
- (2) If the power holder is also the donor of the power, the blanket-exercise clause extends to the power acquired by the power holder after executing the instrument only if there is no gift-in-default clause or the gift-in-default clause is ineffective. The blanket-exercise clause does not extend to the power if there is a gift-in-default clause that is effective. (2015-205, s. 3(a).)

##### **§ 31D-3-304. Substantial compliance with donor-imposed formal requirement.**

A power holder's substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if both of the following apply:

- (1) The power holder knows of and intends to exercise the power.
- (2) The power holder's manner of attempted exercise of the power does not impair a material purpose of the donor in imposing the requirement. (2015-205, s. 3(a).)

**§ 31D-3-305. Permissible appointment.**

(a) If a power holder of a general power of appointment permits appointment to the power holder or the power holder's estate, the power holder may make any appointment, including an appointment in trust or an appointment that creates a new power of appointment that the power holder could make in disposing of the power holder's own property.

(b) If a power holder of a general power of appointment permits appointment only to the creditors of the power holder or the creditors of the power holder's estate, or both, the power holder may appoint only to those creditors.

(c) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power holder of a nongeneral power may:

- (1) Make an appointment in any form, including an appointment in trust, in favor of a permissible appointee.
- (2) Create a general power in a permissible appointee.

(d) The terms of the instrument may permit the power holder of a nongeneral power to create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power. (2015-205, s. 3(a).)

**§ 31D-3-306. Appointment to deceased appointee.**

An appointment to a deceased appointee is ineffective. (2015-205, s. 3(a).)

**§ 31D-3-307. Impermissible appointment.**

(a) An exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(b) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent that the appointment is a fraud on the power. (2015-205, s. 3(a).)

**§ 31D-3-308. Selective allocation doctrine.**

If a power holder exercises a power of appointment in a disposition that also disposes of property the power holder owns, the owned property and the appointive property must be allocated in the permissible manner that best carries out the power holder's intent. (2015-205, s. 3(a).)

**§ 31D-3-309. Capture doctrine; disposition of ineffectively appointed property under general power.**

To the extent a power holder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

- (1) The gift-in-default clause controls the disposition of the ineffectively appointed property.
- (2) If there is no gift-in-default clause or to the extent the clause is ineffective, the ineffectively appointed property passes as follows:
  - a. To the power holder if the power holder is a permissible appointee and living.
  - b. If the power holder is an impermissible appointee or deceased, to the power holder's estate if the estate is a permissible appointee.

- c. If the power holder is an impermissible appointee or deceased and if the estate is not a permissible appointee, under a reversionary interest to the donor or the donor's transferee or successor in interest. (2015-205, s. 3(a).)

**§ 31D-3-310. Disposition of unappointed property under released or unexercised general power.**

(a) To the extent that a power holder releases a general power of appointment other than a power to withdraw property from, revoke, or amend a trust, the gift-in-default clause controls the disposition of the unappointed property. If there is no gift-in-default clause or to the extent that the clause is ineffective, the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

(b) To the extent a power holder fails to exercise a general power of appointment other than a power to withdraw property from, revoke, or amend a trust, the gift-in-default clause controls the disposition of the unappointed property. If there is no gift-in-default clause or to the extent the clause is ineffective, the unappointed property passes as follows:

- (1) To the power holder if the power holder is a permissible appointee and living.
- (2) If the power holder is an impermissible appointee or deceased, to the power holder's estate if the estate is a permissible appointee.
- (3) If the power holder is an impermissible appointee or deceased and if the estate is not a permissible appointee, under a reversionary interest to the donor or the donor's transferee or successor in interest. (2015-205, s. 3(a).)

**§ 31D-3-311. Disposition of unappointed property under released or unexercised nongeneral power.**

To the extent that a power holder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

- (1) The gift-in-default clause controls the disposition of the unappointed property.
- (2) If there is no gift-in-default clause, or to the extent that the clause is ineffective, the unappointed property:
  - a. Passes to the permissible appointees, if both of the following apply:
    - 1. The permissible appointees are defined and limited.
    - 2. The terms of the instrument creating the power do not manifest a contrary intent.
  - b. If there is no taker under sub-subdivision a. of this subdivision, passes under a reversionary interest to the donor or the donor's transferee or successor in interest. (2015-205, s. 3(a).)

**§ 31D-3-312. Disposition of unappointed property if partial appointment to taker in default.**

Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the power holder makes a valid partial appointment to a taker in default of appointment, then the taker in default of appointment may share fully in unappointed property. (2015-205, s. 3(a).)

**§ 31D-3-313. Appointment to taker in default.**

If a power holder makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift-in-default clause had the property not been appointed, then the power of appointment is deemed not to have been exercised and the appointee takes under the clause. (2015-205, s. 3(a).)

**§ 31D-3-314. Power holder's authority to revoke or amend exercise.**

If the terms of an instrument creating a power of appointment do not prohibit the power holder from revoking or amending an exercise of the power, a power holder may revoke or amend the exercise of a power only if one of the following apply:

- (1) The instrument creating the exercise of the power of appointment may be revoked or amended.
- (2) The power holder reserves a power of revocation or amendment in the instrument exercising the power of appointment. (2015-205, s. 3(a).)